

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

MARTHA ELENA GARZA
Plaintiff,

vs.

**STATE AUTO PROPERTY &
CASUALTY INSURANCE COMPANY**
Defendant.

§
§
§
§
§
§
§
§
§
§

Civil Action Number
7:17-cv-00416

Jury

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant, State Auto Property and Casualty Insurance Company (hereinafter "State Auto" or "Defendant"), files this Notice of Removal pursuant to 28 U.S.C. §1446(a), and respectfully shows as follows:

I.
INTRODUCTION

1. Plaintiff is Martha Elena Garza (hereinafter "Plaintiff"); Defendant is State Auto Property & Casualty Insurance Company. There are no other parties. *See* Plaintiff's Original Petition, attached as Exhibit "A - 1".
2. On August 31, 2017, Plaintiff filed Cause No. C-4121-17-E, *Martha Elena Garza vs. State Auto Property & Casualty Insurance Company* in the 275th Judicial District Court of Hidalgo County, Texas ("State Court Action"). *See* Exhibit "A - 1". Plaintiff's suit alleges breach of contract, unfair settlement practices, violations of the Texas Insurance Code, and breach of the duty of good faith and fair dealing, relating to damage allegedly suffered at Plaintiff's home located at 117 N. Milano Road, Weslaco, Texas 78596. *See* Exhibit "A - 1".

3. A citation was issued and State Auto Property & Casualty Insurance Company was served on October 2, 2017. *See* Exhibit “A – 5” and Affidavit of Frank Nania attached as Exhibit “B”.

4. State Auto files this Notice of Removal within the 30-day time period required by 28 U.S.C. §1446(b). *Bd. of Regents of Univ. of Tex. Sys. v. Nippon Tel. & Tel. Corp.*, 478 F.3d 274, 278 (5th Cir. 2007). State Auto files its Original Answer in this Court, contemporaneously with the filing of this Notice. State Auto demands a trial by jury in this Court.

5. Plaintiff has not filed any amended pleadings and no additional parties have been joined. The State Court’s Docket Sheet is attached as Exhibit “A – 6.”

II.

REMOVAL BASED ON DIVERSITY JURISDICTION

6. Pursuant to 28 U.S.C. §1332(a), State Auto removes this case as it involves a controversy between parties of diverse citizenship and an amount in controversy that exceeds \$75,000.

7. The amount in controversy exceeds \$75,000, excluding interest and costs. 28 U.S.C. §1332(a). Plaintiff’s Original Petition seeks “monetary relief over \$100,000 but not more than \$200,000.” *See* Exhibit “A – 1.”

8. Plaintiff is a citizen of Texas. *See* Exhibit “A - 1”. State Auto Property & Casualty Insurance Company is a foreign corporation organized under the laws of the state of Iowa with its principal place of business located at 518 E. Broad Street, Columbus, Ohio 43215. *See* Exhibit “B.”

9. State Auto is the only defendant in this action; therefore, no consent is needed for the removal of this case to federal court.

10. An Index of Exhibits is attached as Exhibit "A". Copies of all pleadings, process, orders, and other filings in the State Court Action are attached to this notice as Exhibits "A - 1" through "A - 5," as required by 28 U.S.C. §1446(a). A list of the counsel of record for all parties, as required by Local Rule 81.6 is attached as Exhibit "C."

11. Venue is proper in this district under 28 U.S.C. §1441(a) because the state court where the suit is pending is located in this District and within this Division.

12. State Auto will promptly file a copy of this Notice of Removal with the clerk of the court in the pending State Court Action.

III.
JURY DEMANDED

13. State Auto requests that this matter be heard by a jury in this Court.

IV.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant, State Auto Property & Casualty Insurance Company, prays that this case be removed to the United States District Court for the Southern District of Texas, McAllen Division, and that further proceedings in the State Court Action be discontinued, and that this Court assume full jurisdiction over such action as provided by law.

Respectfully submitted,

/s/ Sterling Elza

Sterling Elza
Attorney-In-Charge
State Bar No. 24026823
Southern District of Texas Bar No. 1043963
Alicia A. Murphy
State Bar No. 24095005
Southern District of Texas Bar No. 2717568
306 West 7th Street, Suite 200
Fort Worth, Texas 76102-4905
Tel: 817/332-1391
Fax: 817/870-2427
Email: selza@browndean.com
amurphy@browndean.com

**ATTORNEY FOR DEFENDANT,
STATE AUTO PROPERTY & CASUALTY
INSURANCE COMPANY**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing was served upon the Plaintiff by serving her counsel of record, Robert A. Pollom and Jake Rogiers, Ketterman, Rowland & Westlund, 16500 San Pedro, Suite 302, San Antonio, Texas 78232, (210) 490-8372, via fax and certified mail, return receipt requested, in accordance with Rules 21 and 21(a) of the Texas Rules of Civil Procedure, on this the 20th day of October, 2017.

/s/ Sterling Elza

Sterling Elza